THE HONOURABLE SRI BILAL NAZKI

THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE

G.CHANDRAIAH

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WRIT PETITION No. 13963 OF 2005

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DATED: 23rd August, 2005.

Between:

M.Praveen Banu

W/o M.Jilani @ Dubba Jilani

Aged about 32 years, R/o 8/252,

Bankamadi Street

Tadpatri, Anantapur District. -- Petitioner

And

The Collector and District Magistrate,

Anantapur & others. --Respondents.

ORAL ORDER:

(per Honourable Sri Bilal Nazki, the Acting Chief Justice)

Heard learned counsel for parties.

In this Writ Petition, the order passed by the District Collector, purportedly under Section 10 of the Andhra Pradesh Prevention of Anti-Social and Hazardous Activities Act, 1980 (for short “the Act”), was challenged. It appears that the husband of the writ petitioner was externed by virtue of an order passed by the Collector in terms of Section 3 of the Act. During the period of externment, again he came back

to the territory from which he was ordered to be externed. He was arrested by the police and produced before the Collector, who passed the impugned order. The District Magistrate, without even giving a chance to the petitioner's husband to defend himself convicted the detenu under Section 10 of the Act, sentenced him to six months rigorous imprisonment and imposed a fine of Rs.1000/-.

We are surprised to note that an Officer of the status of a Collector and the District Magistrate is not aware even the basics of Criminal Law. Even if she was satisfied that she had the jurisdiction to convict the detenue, even then, a trial had to take place. When the police reported to her that the detenu had violated the conditions of the externment order under Section 3 of the Act and when the detenu was produced before her, she immediately convicted him and sentenced him to six months imprisonment. Right to life cannot be allowed to be treated in such a fashion, particularly, when the District Magistrate had no authority or jurisdiction to award punishment of imprisonment to any one under law. It appears that she was not even aware that how the offences are tried and how the people are convicted. She appears to be also not aware of the Criminal Procedure Code. Criminal Procedure Code is applicable to all criminal trials unless specifically, its application has been excluded by any special law. Courts have consistently held, while interpreting Section 4(1) and (2) of the Criminal Procedure Code that all trials have to be conducted in terms of Criminal Procedure Code unless the application of Criminal Procedure Code is barred by a special enactment. The Andhra Pradesh Prevention of Anti-Social and Hazardous Activities Act, 1980 has not excluded application of Criminal Procedure Code. Section 10 lays down that contravention of the orders made under Sections 3, 4, 5 and 6 of the Act would be an offence and would be punishable with rigorous imprisonment for a term which may extend to three years but shall not be less than three months. For commission of this offence, fine can also be imposed, which could be up to Rs.3000/- with a minimum of Rs.1000/-. We do not know whether the Collector read that she could convict a person under Section 10, when there is no such power under the Act to her. Cognizance of offence can be taken by the Magistrate upon a report in writing by an Officer-in-charge of the Police Station or by information received by him from other sources. Reference to the Magistrate in Section 12 is obviously a reference to the Judicial Magistrate who can try offences under the Criminal Procedure Code. If a violation was reported to the District Collector, all that she could do was to file a complaint before the concerned Judicial Magistrate and the Judicial Magistrate had to try the detenu in accordance

with the procedure laid down by the Criminal Procedure Code. The impugned order is without jurisdiction and violative of Article 21 of the Constitution of India, and, therefore, the same is accordingly quashed and the writ petition is allowed. Costs of Rs.5000/- shall be paid by way of compensation to the detenu as he was kept in illegal confinement. The disposal of this writ petition or quashing of the order passed by the District Magistrate would not, however, be a bar to proceed against the detenu, if so advised, in accordance with law.

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BILAL NAZKI, ACJ.

23.8.2005

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G.CHANDRAIAH, J.

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